No. 88-320

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

THOMAS ROBERT KAMMER,

Appellant,

v.

CHRISTINE J. YOUNG,

Appellee.

ON APPEAL FROM THE
COURT OF SPECIAL APPEALS OF MARYLAND

MOTION TO DISMISS OR AFFIRM

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QUESTION PRESENTED

The question presented by this Motion to Dismiss or Affirm is whether appellant fails to present a substantial federal question in his attack on the introduction in a paternity case of blood test results, where the uncontradicted evidence established that the tests were accurately conducted by qualified experts meeting state statutory prerequisites for admissibility.

PARTIES TO THE PROCEEDING BELOW

The parties have remained the same since this action was filed in the Circuit Court for Baltimore City, Maryland. Defendant/Appellant is Thomas Robert Kammer. Plaintiff/Appellee is Christine J. Young.

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ON APPEAL FROM THE
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MOTION TO DISMISS OF AFFIRM

Pursuant to Rule 16.1, appellee moves to dismiss the appeal herein, or in the alternative, to affirm the decision of the Court of Special Appeals of Maryland. The grounds for the motion are that appellant's constitutional arguments are frivolous and

this appeal fails to present a substantial federal question. Therefore, appellant is not entitled to review by this Court under 28 U.S.C. §1257. Were this Court to treat this appeal as a petition for a writ of certiorari, the petition should be denied for the reasons stated in this motion.

STATE STATUTE INVOLVED

This appeal raises the question of the constitutionality, as applied in this case, of Maryland Code Annotated, Family Law Article, §5-1029, which pertains to the admission of paternity blood test results.

STATEMENT OF THE CASE

The Statement of the Case presented in the Jurisdictional Statement is both argumentative and incomplete. The pertinent facts are set forth accurately in the published Opinion of the Court of

Special Appeals of Maryland. See, Kammer v. Young, 73 Md. App. 565, 535 A.2d 936, 937-940 cert. denied, 312 Md. 602, 541 A.2d 964 (1988); Appendix to Jurisdictional Statement at 56-64.

ARGUMENT

This Court Should Dismiss The Appeal Herein, Or In The Alternative, Affirm The Judgment Below Because Appellant Fails To Present A Substantial Federal Question.

Appellant does not present any valid reasons in support of his bare allegation that he was deprived of rights under the Fifth and Fourteenth Amendments to the United States Constitution. Contrary to the inference raised by appellant, see Jurisdictional Statement at 22 and 24-28, he was not prevented from introducing any evidence, including his own expert, both to

challenge the blood test report and explain its significance to the jury. [1]

Furthermore, this is not a case in which a jury was given an "inflammatory or highly prejudicial presentation" of the results of paternity testing. J.S. at 25. Appellee's case was not based on genetic evidence alone, but on credible non-genetic evidence tending to prove his

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1 The central focus of appellant's attack is the use of a .5 "prior probability" in the blood test equation. However, the jury understood that it was not bound by this working assumption. Indeed, Dr. Chase, appellant's expert, calculated various probability figures using a range of "prior probabilities." This is precisely the approach recommended by Ellman and Kaye in the law review article upon which appellant relies exclusively for his position. 54 N.Y.U. L.Rev. 1131 (1979). This 1979 analysis has since become outdated as the courts, legislatures and the scientific community have refined the appropriate role for genetic testing in paternity disputes. See, e.g., American Association of Blood Banks, Inclusion Probabilities in Parentage Testing, (Robert H. Walker, Ed., 1983); see generally 37 A.L.R.4th 167 (1982).

paternity. As the Court of Special Appeals of Maryland concluded:

> The "statistical probability of paternity" required by the statute comprises only one part of the evidence that is put before the jury concerning the alleged father's probable paternity. It is not the only evidence and it does not create an irrebuttable presumption of paternity. Appellant was allowed to put on evidence in support of his claim that he is not the child's father. All of the evidence went to the jury and there is no evidentiary support for his claim that the jurors improperly relied on the statistical probability as being dispositive of the issue. (footnote omitted)

Kammer v. Young, supra 73 Md. App. at 575, 535 A.2d at 942; Apx. 76-77.

To merit review by this Court, an appeal must raise a substantial federal question. Rule 16.1(b) and (c); see e.g., Hicks v. Miranda, 422 U.S. 332, 344 (1974). This appeal does not. Appellant simply alleges that introduction of blood test results in this case resulted in a deprivation of his rights. Without providing any analysis or pertinent

authority, appellant offers only his bald claim of constitutional deprivation. Contrary to appellant's position, valid genetic testing, when adequately explained to a jury, is admissible. E.g., Walker, Inclusion Probabilities in Parentage Testing, supra; Kolko, "Admissibility of HLA Results to Determine Paternity," 9 Family Law Reporter 4009 (1983); see generally, Commonwealth v. Beausoleil, 490 N.E.2d 788 (Mass. 1986). No substantial federal question is presented by the facts of this case and the decision of the Maryland courts is obviously correct. Thus, further review is unwarranted.

CONCLUSION

Therefore, for the reasons stated, appellee moves the Court to dismiss this appeal, or in the alternative, to affirm the judgment of the Court of Special

Appeals of Maryland. Treating appellant's papers as a petition for a writ of certiorari, the petition should be denied.

Respectfully submitted,

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